

# DRAFT

## **550 FW 1 National Environmental Policy Act - Policy and Responsibilities**

**1.1 What is the purpose of this Manual Chapter?** This part establishes policy and provides uniform guidance to Fish and Wildlife Service (Service or we) personnel on responsibilities for implementing the National Environmental Policy Act of 1969, as amended (NEPA), and related authorities (550 FW 1.4) in planning and implementing our actions and preparing environmental documents in accordance with NEPA.

**1.2 What is the scope of this Manual Chapter?** This part applies to all of our divisions and offices involved in planning and implementing our actions and preparing documents in accordance with NEPA. This part is to be read in conjunction with documents cited in 550 FW 1.4, which are included in full text in the NEPA Reference Handbook. This part does not address our review of actions proposed by other Federal agencies and other related reviews, which is addressed in 505 FW 1-5.

### **1.3 What are the purposes of NEPA?**

(1) The purposes of NEPA are stated in section 2 of the preamble of NEPA: “to declare a national policy which will encourage productive and enjoyable harmony between man and his environment, to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man, to enrich the understanding of the ecological systems and natural resources important to the Nation, and to establish a Council on Environmental Quality.” Two of the purposes have special meaning to us. NEPA’s purpose, “to enrich the understanding of the ecological systems and natural resources important to the nation,” is only one of a few such purposes in law that recognizes the importance of ecological systems to Federal planning and decision making. Further, NEPA’s purpose, “to promote efforts which will prevent or eliminate damage to the environment,” complements our mission (550 FW 1.4).

### **1.4 What are our policies regarding NEPA?**

(1) We shall strive to implement the policy in section 101(a) of NEPA, that is: “. . . it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.”

(2) We shall integrate, in an efficient and reasonable manner, the NEPA purposes (section 2 of NEPA), the NEPA policy (section 101 of NEPA), and the NEPA decision making process (section 102 of NEPA) into the planning and implementation of our actions. Our NEPA goal is to make better

environmental decisions in a cost and time-efficient manner to further our mission to conserve, protect, and enhance fish and wildlife and their habitats for the continued benefit of the American people.

**1.5 What are the authorities for complying with NEPA?** Major authorities, regulations, procedures, and guidance which establish and promulgate the above purpose are listed below.

**A. 42 U.S.C. 4321-4347**, National Environmental Policy Act of 1969, as amended.

**B. 40 CFR 1500-1508**, Council on Environmental Quality Regulations for Implementing the Procedural Requirements of NEPA, July 1, 1986.

**C. 48 FR 34263**, CEQ's Guidance Regarding NEPA Regulations, July 28, 1983.

**D. 46 FR 18026**, CEQ's Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981.

**E. 516 DM 1-6**, Department of the Interior's (Departmental) Manual, particularly Chapter 6, Appendix 1.

**F. Environmental Memoranda Series**, Department of the Interior, Office of Environmental Policy and Compliance (Environmental Statement and Environmental Compliance Memoranda).

**G. Designation of Non-Federal Agencies to be Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act**, CEQ Memorandum, July 28, 1999.

**H. Environmental Justice Guidance Under the National Environmental Policy Act**, CEQ, 1998.

**I. Application of the National Environmental Policy Act to Proposed Federal Actions in the United States with Transboundary Effects**, CEQ, July 1, 1997.

**J. Considering Cumulative Effects Under the National Environmental Policy Act**, CEQ, January 1997.

**K. Incorporating Biodiversity Considerations Into Environmental Impact Analysis Under the National Environmental Policy Act**, CEQ, January 1993.

**1.6 Where are the terms used in this Manual Chapter defined?** Terms associated with the NEPA process are defined in the Council on Environmental Quality's (CEQ) NEPA regulations (40 CFR 1508).

**1.7 What are our organizational responsibilities for complying with NEPA?** 40 CFR 1507.2(a) and 516 DM 6.2B. Overall NEPA responsibilities for the Director, Assistant Director - Ecological Services, other Assistant Directors, Regional Directors, Chief of the Division of Habitat Conservation, and Washington and Regional Office Environmental Coordinators are defined in 516 DM 6, Appendix 1.1 and 032 FW 5. Additional specific responsibilities relative to 550 FW 1-2 are listed below.

**A. Chief, Division of Habitat Conservation.**

- (1) Informs the Department's Office of Environmental Policy and Compliance (OEPC) of agreements to assume cooperating status or any declinations pursuant to 40 CFR 1501.6(c) and 516 DM 2.5.
- (2) Maintains a record of our notices for the preparation and public review of environmental impact statements (EIS), the record of decision, and a copy of each of our draft and final EIS.

**B. Washington Office Environmental Coordinator.**

- (1) Provides staff support to ensure NEPA responsibilities delegated to the Assistant Director - Ecological Services, and Chief, Division of Habitat Conservation, are carried out in accordance with CEQ's NEPA regulations, DOI's NEPA procedures, and Service NEPA guidance.
- (2) Serves as the Service's liaison to CEQ, OEPC, and other Federal agency NEPA staff on NEPA matters, pursuant to 516 DM 6.2 and 516 DM 6, Appendix 1.1D.
- (3) Conducts training and ensures quality control of technical input into NEPA-related training materials for Washington, Regional, and field office personnel, including the Regional Environmental Coordinators on NEPA compliance matters, in coordination with our National Conservation Education Center.
- (4) Obtains the statement control number from OEPC for Washington and Regional Office personnel preparing to release draft and final EISs for the purpose of filing with the Environmental Protection Agency and for intra-Departmental distribution.
- (5) Prepares the Quarterly Report on EISs, with input from the Regional Environmental Coordinators, in accordance with Departmental procedures (ESM96-3).
- (6) Provides technical assistance, quality control, and overview regarding Service-wide compliance with NEPA for our proposals.

**C. Regional Director.**

- (1) Designates an individual in the Regional Office, pursuant to 516 DM 6.2 and Appendix 1.1E, who provides staff assistance to the Regional Director, Assistant Regional Directors, Divisions and field offices on NEPA compliance matters.
- (2) Ensures quality control of all Service environmental documents submitted by offices and Divisions under his/her control.
- (3) Ensures that Regional and field office personnel are adequately trained in NEPA compliance matters.
- (4) Submits notices of intent to prepare an EIS to the Federal Register for actions under his/her authority. Provides a copy of the notice to OEPC in accordance with DOI ESM98-2, and a copy to our Washington Office Environmental Coordinator.
- (5) Has signature authority to file EISs with EPA in accordance with Departmental procedures (ESM98-2). This responsibility cannot be delegated below the Regional Director or Acting Regional Director level. Non-delegated EISs must be coordinated with OEPC, and cannot be printed, numbered, or distributed until approved for printing by OEPC.
- (6) Designates EIS Team Leader to prepare site-specific EIS within the Region.

**D. Regional Environmental Coordinator.**

- (1) Provides staff support to the Regional Director by providing technical assistance to the Assistant Regional Directors, Divisions, and field offices on NEPA-related matters, including internal compliance and coordinating environmental reviews. The technical assistance will be provided in accordance with CEQ's NEPA regulations, DOI's NEPA procedures, and Service NEPA guidance.
- (2) Coordinates significant Regional NEPA-related issues on an inter-agency and intra-Service level. This includes assuring that all affected or interested Service entities are advised of our proposals and their need to provide technical input and assistance.
- (3) Coordinates with counterparts in other agencies to resolve Regional NEPA-related conflicts.
- (4) Serves as liaison to OEPC on non-delegated EISs, pursuant to Departmental procedures (ESM98-2).
- (5) Requests statement control number from the Washington Office Environmental Coordinator prior to filing draft and final EISs with EPA and prior to intra-Departmental distribution.
- (6) Participates in conducting training of Regional and field office personnel on NEPA compliance

matters, in coordination with the Regional Training Officer and our National Conservation Training Center.

(7) Tracks and logs EISs prepared at the Regional level and provides input on a quarterly basis to the Washington Environmental Coordinator for the preparation of the Quarterly Report of EISs, pursuant to Departmental procedures (ESM96-3). To the extent practical, tracks and logs environmental assessments (EA) prepared at the Regional and field office level.

#### **E. Service Divisions and Offices.**

(1) Obtains training on NEPA compliance matters whenever involved in the planning of our proposals requiring the preparation of environmental documents. Contacts the Washington or Regional Environmental Coordinator or the National Conservation Training Center for available courses.

(2) Advises the Washington or Regional Environmental Coordinator, as appropriate, whenever an EIS is proposed, and whenever an EA or EIS is prepared. Consults with the Washington or Regional Environmental Coordinator, as appropriate, for guidance and technical assistance on the scoping, preparation, and public review of environmental documents.

**1.8 What is the Departmental Quarterly EIS Report, and how is it prepared?** OEPC's ESM96-3 requires each bureau to prepare a quarterly report on EISs, to be submitted to OEPC on January 1, April 1, July 1, and October 1. The Regional Environmental Coordinators are to provide input to the Washington Office Environmental Coordinator, who prepares and submits the report to OEPC through appropriate channels.

**1.9 What is the Service NEPA Reference Handbook?** The Service NEPA Reference Handbook, which includes the full texts of various NEPA authorities and related documents cited in this part and in 505 FW 1-3 (Interagency Activities - Environmental Review), is hereby authorized as an integral part of, and is to be read in conjunction with, this guidance. Also refer to 505 FW 1.7.

## **550 FW 2 National Environmental Policy Act Compliance Guidance**

**2.1 What is the purpose of this Manual Chapter?** This part provides uniform guidance to Fish and Wildlife Service (Service or we) personnel on complying with the procedural requirements for preparing environmental impact statements (EIS) and environmental assessments (EA) and for making categorical exclusion determinations in accordance with the National Environmental Policy Act (NEPA) and pertinent regulations, policy, procedures, and guidance.

**A.** Service NEPA Goal. Refer to 550 FW 1.4.

**B.** The objectives of the procedural requirements of NEPA are described under section 102 of the Act. These objectives were, in part, reconfirmed in the Supreme Court Decision, Robertson vs. Methow Valley Citizens Council (1989), which stated:

(1) In reaching its decision, the agency shall carefully consider detailed information concerning every significant environmental impact on the human environment.

(2) The public shall play a role in the decision making process and the implementation of that decision, such as ensuring that monitoring and mitigation plans are executed as prescribed.

**C. Relationship to the Council on Environmental Quality's (CEQ) NEPA Regulations and Department of the Interior's (Departmental or DOI) NEPA Procedures.** This part is consistent with CEQ's NEPA regulations (40 CFR 1500-1508) and Departmental NEPA procedures (516 DM 1-6). This guidance supplements and clarifies, but does not duplicate, the aforementioned regulations and procedures as they relate to our activities.

**D. Total Service Internal NEPA Compliance Guidance.** For a full understanding of NEPA compliance matters for internal Service activities, this guidance should be read in conjunction with the CEQ NEPA regulations, Departmental NEPA procedures, references cited in the Service's Manual (550 FW 1.5, and 550 FW 1 and 3). The reader should also refer to our NEPA Reference Handbook, authorized in 550 FW 1.9, for full texts of various NEPA authorities and related documents.

## **2.2 How does the NEPA process apply to the Service?**

**A. Initial Service Planning and NEPA Decisions.** The NEPA process focuses on the agency's decision making process. There are several critical early and mid-course decisions to be made by our personnel before our final decision on the action is announced and implementation begins. Making proper early and mid-course NEPA decisions can be critical to our success and efficiency in implementing an action. Our decision makers and technical personnel should give particular attention to planning and NEPA decisions early in the process to ensure that major late-course corrections that

could increase delays and costs are avoided. The major decision points are listed below.

**(1) Develop the Proposed Action.** 40 CFR 1501.2 and 516 DM 2.2. Developing the proposed action is an early planning activity that precedes the initiation of the NEPA process. Before we can make a determination whether an action is categorically excluded, requires the preparation of an EIS, or requires an EA, the proposed action or proposal must be developed. The proposed action is not a list of goals, strategies, or objectives. The proposed action is a plan of action, identifying specific actions to be taken and decisions to be made. The specific actions must be quantified (e.g., location of facilities, size of facilities, capacity projections, etc.). When developed, the proposed action will serve as the proposal or proposed action for consideration in the NEPA process (40 CFR 1508.23). As a result of the scoping process (550 FW 2.3), the proposed action may be revised.

**(2) Determine Type of NEPA Compliance.** The basic question under NEPA is: “Is the action a major Federal action significantly affecting the quality of the human environment?” If the answer is “yes,” then an EIS is required. If the action is covered by a Service/Departmental categorical exclusion, no documentation under NEPA is required (refer to 550 FW 3.3C). If the action does not require the preparation of an EIS, and is not covered by a Service/Departmental categorical exclusion, or if the impacts of the action are uncertain, an EA is required. **EXHIBIT 1** is a NEPA decision making flowchart showing the options and pathways for NEPA compliance for an action.

**(a) Categorical Exclusion.** 40 CFR 1508.4 and 516 DM 2.3A. Actions that are categorically excluded do not require the preparation of an EA or EIS. Service actions that are categorically excluded are found in the Departmental Manual (516 DM 2, Appendix 1; and 516 DM 6, Appendix 1.4). If circumstances exist in which a normally categorically excluded action may result in significant impacts on the biophysical environment, or if the action is covered by an exception under 516 DM 2.3A(3) and 516 DM 2, Appendix 2, an EA or EIS must be prepared. If a determination is made that a Service action is a categorical exclusion and the exceptions to the categorical exclusions do not apply, the action can be implemented immediately. Refer to 550 FW 3.3C for guidance on when it may be useful to establish an administrative record of a decision to categorically exclude an action and how to prepare an environmental action statement that documents that decision.

**(b) Environmental Impact Statement.** 40 CFR 1508.11 and 516 DM 4. Potential Service actions which normally require the preparation of an EIS prior to their implementation are listed in 516 DM 6, Appendix 1.6. Also refer to 550 FW 3.3B for criteria to assist in determining when to prepare an EIS for purposes of NEPA compliance, such as when the original proposed action contains mitigation measures to reach a FONSI that would otherwise require the preparation of an EIS. Circumstances may exist in which an action normally requiring the preparation of an EIS would not require one. In such circumstances, an EA will be prepared and handled in accordance with 40 CFR 1501.4(e)(2), requiring 30-day public review of the finding of no significant impact (FONSI) before we sign the FONSI and implement the action (516 DM 6, Appendix 1.6B). Refer to 550 FW 3.3A for guidance

on preparing and distributing the record of decision (ROD).

**(c) Environmental Assessment.** 40 CFR 1508.9 and 516 DM 3. The purpose of the EA is to determine if the action will have significant impacts. Any Service action not fitting (a) or (b) above, or when the impacts of the action are uncertain, or when there are unresolved environmental issues, requires the preparation of an EA. In addition, an EA may be prepared if it is determined that such preparation would aid in the planning or decision making, serve as a vehicle to gain public input or to facilitate interagency coordination, simplify permit approval, or gain other necessary legal clearances. Examples of Service actions normally requiring preparation of an EA are also listed in 516 DM 6, Appendix 1.5. If an EA determines that the proposal is a major Federal action significantly affecting the quality of the human environment, an EIS will be prepared. Refer to 550 FW 3.3B for guidance on preparing and distributing the FONSI.

**(d) Programmatic Document.** 40 CFR 1500.4(I) and 1502.20. A programmatic EIS or EA addresses a group of similar or related actions as a whole, rather than one at a time in separate EISs or EAs. A programmatic document can be an effective means for addressing broad cumulative issues and impacts. These documents can address a group of different actions occurring in the same place, or a single action occurring in many different places. Addressing programs, policies, or plans of broad scope, rather than those of narrow scope, can eliminate repetitive discussions of the same issues. Programmatic NEPA documents do not relieve us of our responsibility to prepare site-specific NEPA documents.

**B. Lead and Joint Agency.** Refer to 40 CFR 1501.5 and 516 DM 2.4.

**C. Cooperating Agency.** Refer to 40 CFR 1501.6 and 1608.5, 550 FW 1.4D and G, and 516 DM 2.5. Also refer to our guidance in 032 FW and 505 FW 2.2.

**(1) Benefit to the Service.** The benefits of early coordination in another agency's planning cannot be over-emphasized. A cooperating agency, primarily in the case when an EIS is required, can provide meaningful assistance to us through early coordination and cooperation in the planning and implementation of our proposals. A cooperating agency may have jurisdiction by law (40 CFR 1508.15) that requires it to approve, veto, or finance all or part of the proposal; or it may have special expertise (40 CFR 1508.26) that may benefit our planning and implementation of the proposal. Any Federal agency with jurisdiction by law that requests, or is asked, to be a cooperating agency, shall be a cooperating agency (40 CFR 1501.6). We encourage our personnel to request other agencies to be a cooperating agency on our proposals to expedite the planning and implementation process by reducing time and costs when other Federal, State, or local planning and decisions are required. The participation of a cooperating agency does not affect the decision making or implementing responsibilities of the lead agency or the review and consultation responsibilities of the cooperating agency pursuant to other environmental requirements.



**(2) Applicability and Eligibility.** This guidance applies when we request another agency to be a cooperating agency on the planning and implementation of a Service proposal, or when another agency requests to be a cooperating agency on a Service proposal. Cooperating agencies should be made aware of our role as lead agency and the role of a cooperating agency, as defined in 40 CFR 1501.5 and 1501.6, respectively. These procedures primarily apply to Federal agencies. However, CEQ's NEPA regulations (40 CFR 1501.6) allow State and local agencies and Indian tribes to be cooperating agencies when such entities have "jurisdiction by law" or "special expertise" on environmental issues addressed in the EA/EIS. These terms are defined in 40 CFR 1508.15 and 1508.26, respectively. We will consider any requests from State and local agencies and Indian tribes to be a cooperating agency, subject to these regulations.

**(3) Cooperating Agency Agreements.** An agreement should be established in writing between the cooperating agencies and the lead agency specifically stating the role of the cooperating agency, including specific tasks to be accomplished, time schedules for completing the tasks, and funds available to the cooperating agency, if appropriate, for the agreed upon product. CEQ's regulations encourage lead agencies to fund part or all activities to be performed by cooperating agencies [40 CFR 1501.6(b)(5)]. Funds for cooperative agency involvement should normally be expended during the scoping stage and not during review and subsequent stages. Refer to 550 FW 1.5G for CEQ's guidance on non-Federal agencies as cooperating agencies.

**(4) Reporting.** Copies of approved cooperating agreements should be provided to the Regional and Washington Office Environmental Coordinators.

**D. Interdisciplinary Planning Team.** 40 CFR 1502.6 and 1502.17. EISs and EAs (if necessary) shall be prepared using an inter-disciplinary approach. Preparers of the document should represent appropriate biological, physical, and economic disciplines necessary to adequately address the key issues and impact analysis. The composition of the team should be determined on the basis of significant issues and impacts identified in the scoping process. The team members can include Federal, State, or other persons with expertise necessary to assist us prepare the EIS or EA.

**2.3 What is scoping and how is it used?** 40 CFR 1501.7 and 1508.25, and 516 DM 2.6. Scoping is a crucial step in the early planning stage of an environmental document. The objectives of scoping are to identify significant issues and to translate these into the purpose for the action, the needs for the action, the action or actions to be taken, alternatives to be considered in detail, alternatives not to be considered in detail, and impacts to be addressed. Scoping is used to design the EIS or EA. Effective scoping should reduce paperwork, delays, and costs; and improve the effectiveness of the NEPA process.

**A. Scoping Process.** Scoping is a public participation process that begins with the publication in the Federal Register of our notice of intent to prepare an EIS. The scoping process ends with the publication of the Environmental Protection Agency's notice of availability of the draft EIS in the

Federal Register. Scoping can be informal or formal, as in the case of an EIS. Scoping is required for an EIS. Public scoping is encouraged for an EA since it helps satisfy NEPA's purposes (550 FW 1.3). The result of scoping is to streamline the analysis and decision making process by ensuring that all important issues are addressed and unimportant issues are eliminated from analysis. Among these issues, our EISs and EAs should also address Indian trust resources and environmental justice concerns, when appropriate. The result of scoping is to focus and streamline the NEPA process. Scoping ends upon issuance of the draft EIS or EA.

**B. Public Participation in Scoping.** Public participation in scoping can be initiated through a number of techniques, such as notices in local newspapers, direct mailings, Federal Register notices, etc. We should carefully consider the affected public and provide reasonable advance notice of public meetings and comment due dates to facilitate effective public participation in the proposal. Preliminary scoping information should be included in the advance notice and at the scoping meeting to solicit meaningful public participation. The scoping information should state the objectives of scoping, the Federal proposal (actions), the purpose and needs for the action, and list preliminary alternatives and impacts. We should strive to understand the public concerns, accurately record their comments, and allow adequate time for involvement by the affected public.

**C. Scoping Results.** The results of scoping should be made available to the affected public. A report of the scoping process and results should be included as an appendix to the EIS or EA. A summary of the scoping process and results should be included as a separate section at the beginning of the EIS or EA. Issues and alternatives raised during the scoping process, but eliminated from detailed analysis in the EIS or EA, should briefly be explained in the scoping results. Most importantly, the results of scoping should be incorporated into the design of and analysis in the EIS or EA.

## **2.4 What is the content of environmental documents?**

**A. Content of EA and EIS.** 40 CFR 1502.10 and 1508.9, and 516 DM 3 and 4. **EXHIBIT 2** is a sample outline of an EA/EIS. Additional guidance on selected components of the outline is provided below.

**(1) Purpose.** 40 CFR 1502.13 and 516 DM 4.9. We define purpose as a goal or end to be obtained.

**(2) Needs.** 40 CFR 1502.13 and 516 DM 4.9. We define need as a lack of something required, desirable, or useful. Needs can be identified from the Service, other Federal agencies, States, or private parties. Needs help define and design alternatives. Thus, needs help our decision makers achieve our NEPA goal (550 FW 1.4) by encouraging the selection of the alternative which best satisfies the identified needs.

**(3) Scoping/Public Participation.** Summarize the results of scoping and public participation in the review and development of the EA/EIS in this section. A full report of scoping should be attached as

an appendix to the EA/EIS. Public scoping is not required for the preparation of an EA, but it is encouraged.

**(4) Alternatives, Including the Proposed Action.** 40 CFR 1502.14 and 1508.23, and 516 DM 4.10. The CEQ NEPA regulations state this section is the heart of the EIS. Alternatives should be reasonable and implementable, must be given equal treatment, and must provide clear choices for the decision maker. Each alternative, including the proposed action, must identify the specific actions, operations, and measures to be taken by the Service, the permit applicant, or grantee. Avoid describing alternatives on the basis of strategies, goals, or objectives. Alternatives should be developed in consideration of scoping comments, purpose, and needs. The EIS and EA should include an alternative comprising the proposed action, a no action alternative, and reasonable alternatives that satisfy the purpose and need(s), to the extent practicable.

**(a) No Action Alternative.** Describe in detail the specific actions that would take place as a result of not taking the proposed action. The actions can be projected linearly to the planning (future) target date or, the actions can be projected non-linearly to the target date based on reasonably-anticipated projects and activities planned or proposed without the proposed action. In unusual circumstances, the no action alternative may be considered unreasonable if its implementation is otherwise restricted or prohibited by a court decision or legislative statute. In such unusual cases, the no action alternative may still be used as the baseline for comparing the proposed action and other alternatives. The basis for the no action alternative should be explained and supported.

**(b) Preferred Alternative.** To avoid confusion, the term “preferred” alternative should normally be used in conjunction with applicant-driven permit or grant actions. For example, the applicant’s proposal should normally be referred to as the proposed action. However, in some instances, we may identify the “preferred” alternative in the draft/final EA or EIS, to distinguish it from the proposed action and other alternatives. The recommended approach is that the final EA or EIS should identify our “proposed decision.” In some cases, the proposed decision could include components of one or more alternatives and/or a combination of several alternatives. To the extent possible, avoid the use of the term “preferred” alternative. This term should not be confused with the requirement to identify the “environmentally-preferable” alternative in the record of decision [40 CFR 1505.2(b)].

**(c) Mitigation and Monitoring Measures.** Mitigation and monitoring measures, as appropriate, should be included in each alternative, except the no action alternative.

**(d) Summary of Actions by Alternative.** A brief, concise table should be inserted at the end of the Alternatives chapter that summarizes the actions by alternative. The table allows the decision maker and the affected public to compare changes in the level of actions between alternatives with the no action alternative. These differences can then be analyzed in the subsequent Environmental Consequences chapter of the EIS or EA.

**(5) Affected Environment.** 40 CFR 1502.15. The description of the affected environment establishes the current environmental conditions to be affected or created by the alternatives, including the proposed action. Focus only on those biophysical, social, and economic environments pertinent to the actions addressed in the alternatives and to the impacts addressed in the Environmental Consequences chapter in the EIS or EA. Although an Affected Environment chapter is not required by CEQ's regulations as a separate chapter in the EA, we suggest that it be included in our EAs. The Affected Environment chapter should include enough information relative to the proposed actions to assist us to develop the analysis contained in the Environmental Consequences chapter.

**(6) Environmental Consequences.** 40 CFR 1502.15 and 1508.8. This chapter addresses the net difference between the environmental impact of the alternatives, including the proposed action, to the no action alternative. An environmental impact is an effect, not a cause (action). For the purposes of NEPA, the terms "impact" and "effect" mean the same. Both significant beneficial and adverse direct and indirect (secondary) impacts must be addressed in the analysis. The analysis should be presented in specific terms, such as number of ducks produced reflected as an increase or decrease, number of fishing visits increased or decreased, tons of soil lost or saved per year, etc. All significant impacts must be addressed in detail in the EIS, even if we do not have the in-house expertise to conduct the analysis. In such cases, additional expertise may be obtained from other Federal, State, or local government agencies or from the private sector to adequately address significant impacts. Refer to 550 FW 2.2D regarding necessary expertise on the interdisciplinary planning team.

**(a) Impacts to be Addressed.** Direct, indirect, and cumulative impacts should be addressed, as appropriate. The extent and breadth of impacts to be addressed should be determined through formal or informal public scoping, as appropriate. Through scoping, impact topics should be identified for analysis in each of the alternatives, including the proposed action. Examples of impact topics are impacts on white-tailed deer, impacts on wetlands habitat, etc. When applicable, other impacts to consider may include minority and low-income populations (ECM95-3 and ECM98-2), Indian trust resources and sacred Indian sites (ECM97-2), transboundary environmental impacts (ESM97-2), and CEQ's guidance on biological diversity (550 FW 1.4K).

**(b) Scope of Analysis of Impacts.** The scope of analysis of impacts to be addressed in the EIS or EA should be dependent upon whether a reasonable, significant link can be established between our proposed action and the impact. This determination should be made during the scoping process and analyzed in the Environmental Consequences chapter.

**(c) Cumulative Impact Analysis.** In an EIS, a cumulative impact analysis should be prepared that addresses the proposed action, and a separate analysis for each alternative (if possible). This should be included within and at the end of the Environmental Consequences chapter. In an EA, a cumulative impact assessment should be conducted if it is deemed necessary through scoping to make a determination of significance of the proposed action. Refer to CEQ's guidance on considering cumulative effects (550 FW 1.5J).

**(d) Impacts of Mitigation.** Mitigation measures may also cause impacts, both positive and negative. Any impacts resulting from the mitigation measures should be analyzed in the Environmental Consequences chapter.

**(e) Summary of Impacts by Alternative.** A brief, concise table should be inserted at the end of the Environmental Consequences chapter that summarizes the impacts by alternative. The table allows the decision maker and the affected public to compare changes in the level of impacts between alternatives with the no action alternative. This table may be useful when making presentations to the decision maker and the public.

**B. Difference Between EA and EIS.** 40 CFR 1501.3 and .4, 516 DM 3.2, 516 DM 6 Appendix 1.5 and 1.6, and 550 FW 3.3B(2). An EA determines when to prepare an EIS, aids agency compliance with NEPA when no EIS is necessary, and facilitates preparation of an EIS when one is necessary. Public scoping for an EA is encouraged. The content of the EA is reduced by design. The Affected Environment chapter in an EA is suggested, but not required. Otherwise, the format of an EA is similar to that of an EIS. The text of a final EIS shall normally be less than 150 pages, and for proposals of unusual scope or complexity, shall normally be less than 300 pages (40 CFR 1502.7). The text of an EA should normally be 10-15 pages, unless combined with other planning documents. The scope and depth of the EA should be “sufficient” for the decision maker to reach a conclusion on the significance of impacts in order to determine if the preparation of an EIS is required. It is not necessary for the EA to address the “relationship between short-term uses of man’s environment and the maintenance and enhancement of long-term productivity” and “irreversible or irretrievable commitments of resources” required in an EIS, as long as the content of the EA can lead to an informed conclusion regarding significance of impacts. An assessment of cumulative impacts, if applicable, should be included in the Environmental Consequences chapter of the EA, consistent in scope and depth with the “sufficiency” requirement stated above. If the analysis of impacts in the EA leads to an informed conclusion that the proposal may significantly affect the quality of the human environment, and that a FONSI cannot be signed, no further detailed analysis of the impacts is required in the EA. At that point, the EA can be concluded, should be made available to the affected public, and the Service should prepare and publish a notice of intent (NOI) to prepare an EIS (refer to 550 FW 2.5C).

**2.5 How do we process and conduct public review of environmental documents?** 40 CFR 1508.10. This section addresses the processing and public review of EAs, NOIs, and EISs. The processing of FONSIs, as well as RODs, is addressed in 550 FW 3. The level of public participation can vary substantially between an EA and EIS. Coordination procedures for intra-Departmental review of environmental documents prepared by Departmental bureaus and offices are addressed in DOI ESM98-3.

#### **A. Processing the EA.**

**(1)** The surname and internal approval of an EA should be done at the same time the accompanying

plan, permit, or rule is surnamed and approved. If an environmental action statement is prepared, it should also accompany the surname/signature package (refer to 550 FW 3.1C). The approval responsibilities for EAs are in accordance with 032 FW.

(2) The conclusions in the EA and subsequent FONSI or NOI to prepare an EIS should accompany the decision making package for review and approval by the decision maker for our action. For example, for an EA that accompanies a document for an action to be approved at the Washington Office level, the approval of the EA, FONSI, or NOI to prepare an EIS will occur at that same level. For an EA that accompanies a document for an action to be approved at the Regional Office level, the approval of the EA, FONSI, or NOI to prepare an EIS will occur at the Regional Office level. The Regional Director may delegate the approval of our actions requiring an EA to the field office level, subject to the coordination provisions under 550 FW 1.7D and E. When finalized, the EA and FONSI are part of our administrative record for the action.

(3) No specific Departmental clearances, coordination, or distribution requirements are required for processing our EAs. The preparation of EAs should be coordinated with our Regional or Washington Office Environmental Coordinator, as appropriate.

**B. Public Review of the EA.** 40 CFR 1501.4(e)(1) and (2) and 1506.6(b), and 516 DM 2.2 and 3.3.

(1) CEQ NEPA regulations and Departmental NEPA procedures require public notification, where appropriate, to allow the affected public to be involved in the EA process. However, no time periods are specified in the CEQ NEPA regulations or Departmental NEPA procedures for the review of the EA. Specific time periods are to be determined by the decision makers for the action, as appropriate.

(2) The EA shall be made available by appropriate notice and/or be circulated to the affected public. In most cases, a draft and final EA may be prepared and circulated. In such cases, the final EA should address the comments of the public, and other Federal, State and local agencies. In cases where an EA is expected to generate few if any comments, a single EA can be circulated to the affected public. In such cases, the EA would normally be referred to as an “EA”, rather than a “Final EA.” The draft and final EA should be circulated to the public with the accompanying draft and final project documents, such as the plan, permit, or rule. For example, a draft EA should be circulated with the draft plan, and the final EA with the final plan. All substantive public comments and our response to those comments should be attached to the final EA.

(3) The length of the public review period for the EA should normally be the same as the public review period for the accompanying planning and/or decision, as appropriate. For example, the Endangered Species Act requires a notice in the Federal Register, which initiates a 30-day public review of the draft habitat conservation plan. If an EA was prepared for the action, the notice would also announce the

availability of the EA for review in the same review period. In another example, 602 FW 2 requires a public comment period for a draft refuge comprehensive conservation plan (CCP), and a 30-day waiting period for the final CCP. If an EA was prepared for the CCP, it should be circulated for review in the same manner as the draft and final CCP. Service personnel should include public participation in the preparation, review, and implementation of the EA in parallel with other Service requirements to reduce delays, reduce costs, and to make a better environmental decision.

(4) CEQ NEPA regulations [40 CFR 1501.4(e)(2)] and subsequent CEQ NEPA guidance require a 30-day review of the FONSI under certain circumstances. Refer to 550 FW 3.3B(4) for a list of the criteria for circulating the FONSI. If an EA was not previously made available for public review, it should be made available for public review at the same time the FONSI is circulated, subject to the 30-day review period.

(5) Public notice of the EA can be made using any appropriate media means to reach the affected public. If an EA is prepared for an action having nationwide implications, a notice must be published in the Federal Register.

**C. Processing and Public Notification of the NOI.** 40 CFR 1501.7, 1508.22, and 516 DM 2.3D. The NOI to prepare an EIS shall be published in the Federal Register by the Service Washington or Regional Office, as appropriate. A copy of the notice should be provided to OEPC, in accordance with DOI ESM98-2, and a copy to the Washington Office Environmental Coordinator. The NOI initiates the scoping process for the EIS, which ends upon issuance of the draft EIS. The notice for the NOI in the Federal Register should indicate the approximate release date of the draft EIS for public review. The Federal Register notice can also indicate a closing date for comments to be considered in the preparation of the draft EIS. Normally, this would be 30 to 60 days following publication of the notice. Any comments received in writing or verbally from any public scoping meetings for the EA shall be considered in the preparation of the draft EIS. Any comments received after the comment due date still may be considered, depending upon the schedule for preparing the draft EIS. Where applicable, these procedures may also apply to the public notification for preparing an EA, as appropriate. **EXHIBIT 3** is an example of an NOI to prepare an EIS in the Federal Register.

**D. Processing and Public Review of the EIS.** 40 CFR 1506.6, 1506.9, 1506.10, and DOI ESM94-8, 95-3, 96-2, and 98-2.

(1) **Service and Departmental Clearance.** DOI ESM98-2. Regional Offices and Washington Office Divisions preparing EISs should contact the Washington Office Environmental Coordinator to obtain additional guidance on whether an EIS is delegated or non-delegated, and to obtain Departmental clearance for publication. Most of our EISs are delegated, meaning that signature authority for the proposed action rests by delegation only with the Assistant Secretary for Fish and Wildlife and Parks or the Service. Refer to DOI ESM98-2 for the criteria by which an EIS is non-

delegated, and additional requirements, including restrictions on obtaining a control number . Non-delegated EISs must be approved and filed with EPA by the Assistant Secretary for Policy, Management and Budget (AS/PMB). The AS/PMB has assigned this responsibility to OEPC. Evidence of Departmental clearance is required by EPA before EPA will publish their notice of availability in the Federal Register. The Department will not provide clearance to us until we have indicated that the document has been approved by the Regional Director or Director, and has been printed or is being distributed. A “DES” number must be obtained for a draft EIS, and a separate “FES” number must be obtained for a final EIS. The clearance number must be written (it does not need to be printed) on the front outside cover of all draft and final EISs sent to EPA for filing, OEPC, and affected or interested offices or bureaus in the Department of the Interior. The clearance number is not required to be marked on EISs distributed to other Federal agencies and the public.

**(2) Filing EISs with EPA.** DOI ESM95-3, 96-2, and 98-2. Once the EIS has received Departmental clearance, it should be filed as soon as possible with EPA. The appropriate copies should be filed with EPA by Express Mail, to avoid any delays in the publication of the notice. EPA will prepare a notice of availability, which contains the name of the agency, name of the project, location, comment due date, and agency contact person and telephone number. The notice will appear in the Federal Register under EPA’s “Environmental Statements, Availability, etc. - Weekly Receipts.” EPA will publish the notice on Friday of the week following the week the notice is received. The date of EPA’s notice of availability in the Federal Register is counted as the official first day of the comment period. Unless a longer due date is requested in the Service’s or Department’s letter to EPA, the due date EPA will list in the Federal Register will be 45 days or 60 days for a draft or final EIS, respectively, from the date of publication in the Federal Register. If the last day falls on a weekend or Holiday, EPA will select the next working day as the closing date. Responsibilities for filing EISs are not delegated below the Regional Director or Director level, as appropriate (550 FW 1.7C). Departmental statement control numbers for draft and final EISs are obtained through the Washington Office Environmental Coordinator (550 FW 1.7D). **EXHIBIT 4** is an example of a letter for filing a draft/final EIS with EPA.

**(3) Review Time Period.** 40 CFR 1506.10, 516 DM 4.24, and DOI ESM94-8. This guidance incorporates Departmental procedures and CEQ NEPA regulations regarding the time period for public and agency review of a draft EIS. The time period for public and agency review of the draft EIS will be a minimum of 60 days from the date of transmittal of the draft EIS to EPA, or a minimum of 45 days from the date of EPA’s notice of the draft EIS in the Federal Register, whichever is less. Normally, the latter time period (45 days) is indicated in the EPA notice, unless requested by us to be longer.

**(4) Service Notice of Availability (NOA) of Supplemental Information.** DOI ESM98-2. We should publish an additional, but separate, notice in the Federal Register containing supplementary information on the proposal. The due date for comments indicated in that notice must be the same as indicated in the EPA notice. **EXHIBIT 5** is an example of a Service NOA in the Federal Register for



a draft/final EIS.

**(5) Intra-Departmental Distribution and Review of EISs.** DOI ESM98-3. **EXHIBIT 6** is an example of a memorandum seeking intra-departmental review of an EIS. The memorandum should be addressed to any bureau in the Department of the Interior that may be affected by the proposal. The number of copies of the EIS to be sent to each bureau will be in accordance with DOI ESM98-3.

**E. Contractor Guidance and Disclosure Statement.** 40 CFR 1506.5(c) and 516 DM 6, Appendix 1.3. An EIS can be prepared by us or a contractor, but not by the applicant who is seeking to receive a permit or approval from us. When a contractor prepares an EIS for us, the contractor shall prepare a disclosure statement for inclusion in the draft and final EIS to ensure the avoidance of any conflict of interest. An EA can be prepared by us, a contractor, or the applicant. **EXHIBIT 7** is an example of a disclosure statement to be included in a draft and final EIS.

**F. Supplements.** 40 CFR 1502.6 and 516 DM 4.5. A supplement shall be prepared for draft or final EISs if (1) substantial changes are made to the proposed action that materially and substantially affect the analysis of impacts, and (2) significant new circumstances or information becomes available that materially and substantially affect the analysis of impacts. In such cases, a supplement is prepared when the changes are judged to have a material affect on the decision makers choice. We can also prepare a supplement to further the purposes of NEPA.

**G. Public Participation Guidance.** 40 CFR 1501.7 (Scoping), 1503 (Commenting), and 1506.6 (Public Involvement). Public participation is to be an integral and required part of the NEPA process. We shall make a reasonable and concerted effort to involve affected Federal agencies, States, government officials and agencies, non-governmental organizations, and the public in the NEPA planning, decision making, and implementation process. All substantive public comments to the draft EIS and our response to those comments should be addressed in the final EIS in accordance with 40 CFR 1503.4. Refer to the referenced CEQ NEPA regulations for guidance on techniques and procedures for public participation in the NEPA process. Also refer to 516 DM 1.6 and 1.7, 301 DM 2; and 550 FW 2.3 and 2.4A(3).

**H. Handling of Public Comments.** Each public comment letter or electronic transmission should be numbered and logged (name of originator, date of letter or electronic transmission, and date received). The original letter and attachments (if any) should be maintained in a clean manner (without pen and ink markings or marginal comments). The disposition of public comment letters on environmental documents will be in accordance with our records disposition procedures in 283 FW 1-4.

**I. Freedom of Information Act (FOIA) Requests.** 203 FW 1-2. Environmental documents, defined in 40 CFR 1508.10, should be made available without costs, to the extent practical, to the public. Requests for copies of the public comments received by the Service on EAs and EISs, commenter names, home addresses, and other information should be consistent with current Service

and departmental policy. If public requests for public comments on our documents pose unusual circumstances that may outweigh the balance of the privacy interest vs. the public interest, consult the Regional Service FOIA Officer and the Regional Solicitor for advice. The following language should be inserted in notices of availability of environmental documents for public review.

All comments received from individuals become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act and the Council on Environmental Quality's NEPA regulations [40 CFR 1506.6(f)]. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment.

**J. Intra-Service Coordination.** Preparers of EAs and EISs should ensure that all potentially affected Service programs and offices are coordinated with during the preparation and processing of environmental documents prior to release of such documents for public review.

**K. Administrative Record for NEPA Documents.** Our office originating the NEPA documents for an action should at a minimum maintain the following permanent administrative record of NEPA compliance: draft and final EA, FONSI, NOI to prepare an EIS, draft and final EIS, and ROD. Also refer to 550 FW 1.7A.

## **2.6 How can we improve the effectiveness of NEPA?**

**A. Reducing Paperwork and Delays.** 40 CFR 1500.4 and 1500.5. Efforts should be made during the scoping process (550 FW 2.3) to reduce paperwork and delays by addressing only important or significant issues, not addressing insignificant issues, integrating the NEPA requirements with other consultation and review requirements, using incorporation by reference (40 CFR 1502.21), tiering (40 CFR 1502.20), adoption (40 CFR 1506.3, and 550 FW 2.6B), joint processing with other Federal and State requirements, combining NEPA documents with other planning documents, and parallel processing of environmental requirements (550 FW 2.6C).

**B. Adoption.** 40 CFR 1506.3 and 516 DM 3.6. We can adopt another Federal agency's EA or EIS or another Federal agency can adopt a Service EA or EIS to streamline the NEPA compliance process. The key components to streamlining the NEPA process when we adopt another agency's NEPA document are: (1) the document to be adopted must adequately comply with Departmental/Service NEPA procedures/guidance; (2) we should be a cooperating agency with the other Federal agencies in the preparation of their EA/EIS, in accordance with 40 CFR 1501.6; and (3) the other Federal agency's EA/EIS must adequately address our actions and alternatives being

considered. This requires close coordination between the involved agencies. **EXHIBIT 8** is a flowchart of the adoption process.

**C. Parallel Processing and Integration of the NEPA Process with Other Environmental Requirements.** 40 CFR 1502.25. To avoid delays and increased costs due to sequential processing of Federal and State environmental requirements, all environmental requirements should be processed concurrently, to the extent practical. For many Federal proposals, the parallel processing should ensure concurrent integration of the planning process for the proposal with the requirements under section 404 of the Clean Water Act, section 7 of the Endangered Species Act, NEPA, section 106 of the National Historic Preservation Act, and other requirements.

**D. Assistance and Guidance to Applicants.** 40 CFR 1506.5(a); 516 DM 6, Appendix 1.3; and 550 FW 2.5D(5). Our personnel should assist applicants and contractors, as appropriate, in the preparation of environmental documents for our proposals. When applicable, we may require permit applicants to provide additional information on the proposal and on its environmental effects as may be necessary to satisfy our requirements to comply with NEPA, other Federal laws, and executive orders.

## **2.7 What other NEPA-related guidance should we be aware of?**

**A. Record of Compliance.** 318 DM 1. The issuance of regulations and policy normally requires the preparation of a Record of Compliance (ROC). The ROC contains a section on NEPA compliance for the action. When a Service action is categorically excluded, the ROC should state which categorical exclusion(s) applies.

**B. Emergency Actions.** 40 CFR 1506.11, 516 DM 5.8, DOI ESM97-3. CEQ's NEPA regulations allow agencies to take emergency actions that would have significant environmental impact without NEPA compliance so long as the agency consults with CEQ. The use of an emergency action is very limited by design, is rarely taken by the Service, and applies only in cases where an EIS would otherwise have been prepared. The process is not applicable to an action covered by an EA. Refer to DOI ESM97-3.